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April 9, 2003

VIA ELECTRONIC SUBMISSION

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

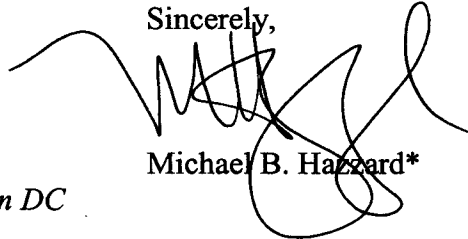
Re: WC Docket No. 03-16

Dear Ms. Dortch:

Please find attached the Supplemental Declaration of Ron A. Walters on behalf of Z-Tel Communications, Inc. in the above-referenced proceeding in response to the Commission's supplemental public notice, DA 03-1093.

In accordance with the Commission's Public Notice, DA-03-156 (Jan. 16, 2003), Z-Tel is filing this letter and attachment electronically through the Commission's Electronic Comment Filing System. If you have any questions regarding this matter, please contact me at (202) 887-1240.

Sincerely,



Michael B. Hazzard*

**Admitted in Virginia, not admitted in DC*
cc: (via electronic mail)

Jeffrey Carlisle
Michelle Carey
John P. Stanley
Gina Spade
Marcus Maher

Susan Pie
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Dorothy Wideman
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Application by SBC Communications, Inc.,)	WC Docket No. 03-16
Michigan Bell Telephone Company, and)	
Southwestern Bell Communications Services,)	
Inc. for Provision of In-Region, InterLATA)	
Services in Michigan)	

**SUPPLEMENTAL DECLARATION OF RON A. WALTERS
ON BEHALF OF Z-TEL COMMUNICATIONS, INC.**

I. INTRODUCTION

1. My name is Ron A. Walters. I am the Vice President-Industry Policy for Z-Tel Communications, Inc. ("Z-Tel"). I previously filed a declaration in this proceeding. The purpose of this supplemental declaration is to respond to the FCC's supplemental public notice, issued on April 4, 2003, regarding SBC's operations support systems ("OSS") in its Midwest Region, which includes Michigan. First, I address the shortcomings of SBC's OSS, and demonstrate that those shortcomings are linked directly to its Ameritech predecessor's opposition to the unbundled network element platform ("UNE-P"). Second, I address the anticompetitive effects that SBC's systems have had on Z-Tel's business in Michigan and in other states in SBC's Midwest territory.

**II. SBC'S OSS SHORTCOMINGS RESULT FROM AMERITECH'S
HISTORIC OPPOSITION TO UNE-P**

2. SBC's OSS shortcomings at issue in this proceeding all involve the UNE-P. This should not be surprising to anyone, as SBC's predecessor, Ameritech, has been the staunchest opponent of the UNE-P of all of the Bell Companies. Indeed, the Commission levied its largest fine ever against SBC for UNE-P related violations in the

five-state Ameritech region last year.¹ In my view, SBC's current OSS problems in the Ameritech states relate directly to its historical underdevelopment of systems and procedures to support UNE-P. To elaborate on this point, I first discuss SBC's "CABS" conversion, and second I discuss Line Loss Notification ("LLN") issues.

A. CABS Conversion

3. At the outset, I would like to note a couple of important things about the CABS conversion. First, as SBC concedes, the purpose of its conversion was to convert "the embedded base of UNE-P circuits from the Resale Billing System ("RBS") to the CABS billing system."² Second, SBC did not even begin the conversion until "the fall of 2001" – a full two years after it started providing the UNE-P. Third, SBC didn't conduct its "database reconciliation project" until January 2003.³

4. SBC laments that the conversion "took longer than SBC anticipated" due to, among things, "large volumes of new UNE-P service orders."⁴ Had SBC began provisioning UNE-P using CABS when it first began providing UNE-P in 1999 (which occurred only as a result of the SBC/Ameritech merger conditions and UNE Remand Order), then this "conversion" would not even be an issue today. SBC did not do so, however, and the Commission and the CLECs are left with discussing newly provided – but unattested⁵ – data from SBC less than two weeks prior to the 90-day statutory deadline for evaluating a section 271 application.

¹ SBC Communications, Inc. Apparent Liability for Forfeiture, Forfeiture Order, 17 FCC Rcd 19978 (Oct. 9, 2002) (Commission assessed \$6 million in fines for violations associated with SBC's unlawful restrictions on the shared transport network element.).

² SBC April 3 *Ex Parte*, WC Docket No. 03-16, at 1.

³ *Id.*

⁴ *Id.*, 2-3.

⁵ Given the 11th hour presentation of this explanation and SBC's historic problems with the accuracy declarations and affidavits filed with the Commission, I'm not surprised that SBC filed its April 3 *ex parte* as a letter, rather than an affidavit or declaration.

5. SBC's own data demonstrates that more than a half million orders have fallen out to manual processing between March 2002 and March 2003.⁶ That includes approximately 25,000 UNE-P orders that fell out to manual processing just last month. What SBC does not reveal is which order types require manual processing and the reasons for the fallout. Without that information, it is impossible for Z-Tel or any other UNE-P CLEC to isolate the extent of problems that result from manual processing. There can be no question, however, that manually processed orders are much more error prone and delayed than electronically processed orders. Moreover, there is similarly no question that SBC's analogous retail orders do not require manual processing, and CLECs therefore are receiving inferior treatment as compared to SBC retail.

6. Finally, and in any event, the fact remains that SBC's conversion to CABS billing has not rectified Z-Tel's historic and on-going billing disputes with SBC. From January 2001 to December 2002, Z-Tel submitted more than 600 billing disputes in Michigan. These disputes involved almost 400,000 telephone numbers and more than six million calls. The total disputed amount was more than \$3 million. Less than half has been credited to Z-Tel by SBC. In addition to utilizing the billing dispute process, Z-Tel also formally launched billing dispute negotiations with SBC on July 29, 2002.⁷ Z-Tel requested a negotiations completion date of September 30, 2002. A settlement agreement has still not been realized today. As a company, Z-Tel has a total of approximately \$15 million in cash reserve. For SBC to be permitted to tie up approximately 10% of Z-Tel's cash in billing disputes is as ridiculous as it is anticompetitive.

⁶ SBC April 3 *Ex Parte*, WC Docket No. 03-16, at Table 1.

⁷ Z-Tel purchased UNE-P from Ameritech's tariff and therefore utilized the dispute process described in Ameritech Tariff MPSC No. 20R, Part 2, Section 2.

7. In sum, SBC's April 3 *ex parte* demonstrates that systemic billing problems continue to persist with its OSS for UNE-P orders in the former Ameritech states, the anticompetitive effects of which are well documented by Z-Tel and others. Until such time as SBC's billing system stabilizes and SBC resolves outstanding billing disputes, SBC simply cannot satisfy the competitive checklist.

B. LLN Performance

8. Like the CABS conversion issue, SBC's LLN performance problems relate only to UNE-P, and flow directly from SBC's predecessor's historic opposition to UNE-P and related underdevelopment of OSS interfaces. Again, SBC's LLN failures are well documented in this proceeding, including SBC's own admission of thousands of LLN errors as recently as March 6, 2003. How SBC could satisfy checklist item two's OSS requirement with this record is nonsensical.

9. Rather than repeat SBC's well-documented LLN failures, I would like the Commission to consider two things. First, if SBC is providing parity of LLN information to CLECs and SBC's retail unit, then why is it the case that CLECs have incurred literally tens of thousands of double billing complaints from consumers, whereas SBC's retail unit reports none? The obvious explanation is that SBC's retail unit receives information superior to that provided to CLECs.

10. Second, even if SBC's LLN performance were at 95% as it claims, it is important to note that such performance means that *one in twenty* CLEC customers risk being double billed if they leave the CLEC for another service provider. For a company attempting to build a business reputation among consumers for reliable, residential and small business service, a one-in-twenty rate is, frankly, unacceptable. In addition, this

belief blithely disregards the consumer protection issues at stake. What would the FCC say to a slammer whose defense amounts to its assertion that it has “only” slammed 5% of its customers? SBC asserts that it processed nearly 550,000 UNE-P orders in March 2003. Would the FCC accept the slamming of 27,500 consumers? I think not.

II. SBC’S OSS SHORTCOMINGS HAVE HARMED AND CONTINUE TO HARM Z-TEL’S BUSINESS

11. SBC makes much of the high market penetration that CLECs have achieved in Michigan and the support that it has received from the Michigan Public Service Commission. However, SBC’s reliance on these two pieces of information serves only to obscure, rather than illuminate, SBC’s obvious noncompliance with section 271.

12. Market penetration, standing alone, means nothing, which is why Congress included no market share test in section 271. Market penetration rates in Michigan result from a variety of factors, including SBC’s relatively high retail telephone rates and its historic service quality problems. The fact is, in Michigan, consumers are simply more willing to leave SBC than in other areas in the country.

13. This does not, however, mean that SBC has satisfied the checklist. At its height in 2001, Z-Tel had approximately 45,000 customers in Michigan. At present, Z-Tel has only 15,000 customers – a decline of 66%. This reduction is due in part to SBC’s LLN fallout and resulting double billing. As Z-Tel has noted in its earlier filings in this proceeding, the Illinois Commerce Commission has found that SBC’s LLN failure has “injured Z-Tel and placed Z-Tel’s reputation in jeopardy.”⁸ SBC’s performance failures support this conclusion in Michigan as well.

⁸ *Z-Tel Communications, Inc. v. Illinois Bell Telephone Company (Ameritech Illinois) – Verified Complaint and Request for Emergency Relief Pursuant to Sections 13-514, 13-515 and 13-516 of the Illinois Public Utilities Act*, Case No. 02-0160, Order at 22 (I.C.C. 2002).

14. As for the support of the Michigan PSC, the Commission should recognize that the Michigan PSC is conducting an ongoing compliance proceeding on a number of issues, including the billing and LLN issues discussed in this declaration. The obvious question is why a “compliance proceeding” is necessary if SBC already has satisfied the competitive checklist? The obvious answer is that SBC simply has not satisfied the competitive checklist.

15. More importantly, from Z-Tel’s perspective, if this Commission approves SBC’s 271 application in Michigan, SBC will be under absolutely no obligation to improve performance as part of the Michigan PSC’s compliance proceeding. There is simply nothing in the Communications Act that requires SBC to do more than that required by section 271’s competitive checklist. Moreover, in my experience, I have never once seen a Bell Company’s performance improve with a grant of 271 authority. To the contrary, Bell Companies’ performance is at its best while an application is pending before this Commission.

IV. CONCLUSION

16. As I demonstrated above, SBC’s application falls short of section 271’s requirements, as evidenced by SBC’s April 3 Ex Parte, among other items.

17. This concludes my declaration.

I declare under the laws of the United States that the statements presented
herein are true and correct.


Ron A. Walters